

A.G. Contract No.: KR05-0695TRN
ECS File No.: JPA 05-038
Project No.: TEA-FLO-0(004)A
Section: Main Street
Project: Butte Avenue-Ruggles Street
TRACS No.: SL532 01C/01D
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF FLORENCE

THIS AGREEMENT is entered into this date August 11, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF FLORENCE, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the Town and is authorized as the designated agent. Funds expended for the Project, are authorized by reason of Federal law and regulations.

4. The project lies within the boundary of the Town and has been selected by the Town; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The Town, in order to obtain Federal funds for the construction of the Project, is willing to provide Town funds to match Federal funds in the ratio required or as finally fixed and determined by the Town, State and FHWA, including actual construction engineering (CE) and administration costs.

NO. 27677
Filed with the Secretary of State
Date Filed: 8-11-05
Janice K. Brewer
Secretary of State
By: [Signature]

6. The work embraced in this Agreement is for the design, construction and maintenance of pedestrian enhancements along both sides of Main Street between Butte Avenue and Ruggles Street. Enhancements will include, sidewalk and crosswalk improvements, landscaping, pedestrian lighting and street furniture. The estimated Project costs are as follows:

| | |
|----------------------------------------------------------------------|-------------------------|
| Total Estimated Design Costs (TRACS No.: SL532 01D) | \$ 60,000.00 |
| Estimated Federal Aid Funds @ 94.3% | \$ 56,580.00 |
| Estimated Town Funds @ 5.7% | \$ 3,420.00 |
| Total Estimated Construction Costs (TRACS No.: SL532 01C) | \$468,500.00 |
| Estimated Federal Aid Funds @ 94.3% | \$441,795.00 |
| Estimated Town Funds @ 5.7% | <u>\$ 26,705.00</u> |
| *Total Estimated Cost of the Project | \$528,500.00 |

*(Includes construction, construction engineering administration and incidentals)

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Agree to be the Town's authorized agent for the Project and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designates the Town to self-administer the Project.

c. Upon execution of this Agreement, make payments to the Town for the direct actual cost of the construction of the Project, plus construction engineering, within thirty-days (30) after receipt and approval of an invoice per the reimbursement ratios specified above.

d. Not be obligated to maintain said Project, should the Town fail to budget or provide perpetual and proper maintenance as set forth in this Agreement.

2. The Town shall:

a. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications at the lowest bid price.

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the Town up to 94.3% percent of the construction cost. Construction administration costs not participated in the FHWA shall be borne by the Town.

c. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage.

d. Consent to any inspections performed by the State, provide records or audit any books of the Town in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

e. Prior to advertising the Project, and per FHWA's conditions to self administer this Project, provide to the State copies of plans and specifications that demonstrate that the project is biddable and constructible.

f. Upon execution of this Agreement, and on not more than a monthly basis, invoice the State for the estimated 94.3% Federal Aid construction and construction administration costs addressed under this Agreement. The Town is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

g. Provide electrical energy, light bulbs, water connections and landscape maintenance during and after the construction phase, all at the Town's expense.

h. Maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices. This includes keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed and established at the completion of the Project.

i. Upon completion of the Project, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance to the Project including all enhancement improvements, including but not limited to; electrical energy, water and landscape care.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement or for the resulting construction project. The Town, in regard to the Town's relationship with the State, assumes full responsibility for design, plans, specifications, reports, and the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims. The Town will require its contractors to name the State and the Arizona Department of Transportation (ADOT) as an additional insured in the contractor's insurance policies. The Town will also require its contractors to name the State and ADOT as an additional indemnitee in the Town's contracts with its contractor(s). It is understood and agreed that the State's participation is confined solely to securing Federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the construction and the construction engineering work covered by this Agreement is to be borne by FHWA and the Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

3. This Agreement shall remain in full force and effect until completion of the work; provided however, that any provisions in this Agreement for electrical power, water and maintenance shall be perpetual, unless assumed by another governmental agency.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:


Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525


Town of Florence
Attn: Public Works Director
Box 2670
Florence, AZ 85232
(520) 868-7500

11. In accordance with Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF FLORENCE

By 
TOM RANKIN
Mayor

ATTEST:
By 
LISA GARCIA
Clerk

STATE OF ARIZONA

Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

G:05-038-Florence-Main Street-Draft-6July2005-slc

JPA 05-038

APPROVAL OF THE TOWN OF FLORENCE

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF FLORENCE, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 21 day of July, 2005.


Town Attorney

**TOWN OF FLORENCE
RESOLUTION NO. 955 -05**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL
OF THE TOWN OF FLORENCE ENTERING INTO AN
AGREEMENT WITH THE STATE OF ARIZONA TO FUND
THE STREETScape PROJECT.**

WHEREAS, \$498,375 in federal aid is available through the Arizona Department of Transportation to fund improvements to downtown Florence, which include sidewalk and crosswalk improvements, landscaping, pedestrian lighting and street furniture; and

WHEREAS, the Town would contribute \$30,125 in funds, administer the project and conduct the necessary actions to maintain the improvements; and

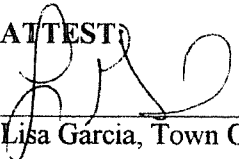
WHEREAS, improvements to the downtown along Main Street between Butte Avenue and Ruggles Street would provide a economic stimulus that would potentially increase generate foot traffic and activity in the historic downtown; and

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Town Council authorize the Town of Florence to enter into an IGA with ADOT to fund the Streetscape Project.

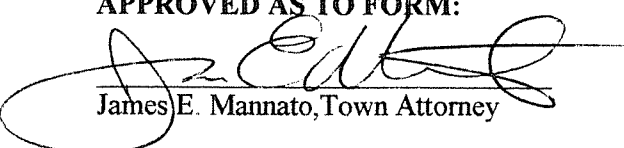
PASSED AND ADOPTED this 19th day of July, 2005.



Tom J. Rankin, Mayor

ATTEST


Lisa Garcia, Town Clerk

APPROVED AS TO FORM:


James E. Mannato, Town Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

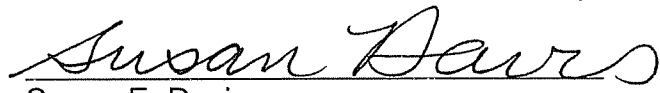
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0695TRN (**JPA 05-038**), an Agreement between public agencies, i.e., *The State of Arizona* and *The Town of Florence*, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 3, 2005

TERRY GODDARD
Attorney General


Susan E. Davis
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
917383